

invention of claims 11-14 and 25-27) was formulated, tested, approved, and commercially produced long before the filing date of the Gardiner '339 patent. The Declaration and supporting exhibits clearly show that applicants' invention was conceived and reduced to practice many months before the filing date (August 21, 1998) of the Gardiner patent. Applicants therefore submit that the Gardiner '339 patent provides no basis for rejection of applicants' claims under Section 102(e).

Claims 11-14 and 25-27 were also rejected for obviousness under Section 103 over a combination of Kolla et al. and earlier Gardiner Patent 5,817,329. While applicants readily admit that lipoic acid and creatine monohydrate were known in the prior art, nothing in the Kolla et al. reference or the Gardiner '329 patent suggests that any benefit would be derived by combining the two ingredients in a dietary food supplement. That suggestion appears only in the later Gardiner '339 patent, which is not a valid reference here for the reasons stated above, and in applicants' own specification. As to the latter, it is well established that recourse to an applicants' specification and claims to make out a case for obviousness under Section 103 is improper.

Is is also submitted that applicants have clearly made out a *prima facie* case for unobviousness by noting the existence of the later Gardiner Patent 6,136,339 which covers a food supplement in which the two ingredients are combined. It is understood from the Examiner's comments that the Gardiner '339 patent should not be considered legal precedent, but the fact that it exists is certainly germane to the issue of obviousness. Since the '339 patent exists and discloses (and claims) what has been held to be unobvious and patentable, it is believed that applicants are entitled to make the same claims for purposes of challenging priority of invention.

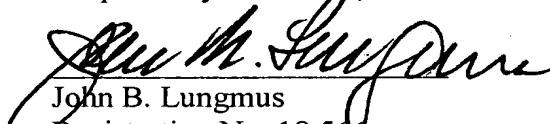
With regard to the Examiner's rejection of claims 15-24 for obviousness under Section 103 over a combination of Schmidl et al., Majeed et al., Pera and Peale, it is again submitted that the grounds for rejection over those references were fully addressed in applicants' response dated July 25, 2000, and those arguments are included here mutatis mutandis. For the reasons given in the July 2000 response, it is submitted that claims 15-24 are patentably distinguishable from the prior art and are in proper condition for allowance.

Applicants also note once again that claims 15-24 all recite a multiple-ingredient food supplement in which two of the ingredients are creatine monohydrate and alpha lypolic acid. Therefore, it is submitted that such claims are also patentable over the prior art for the reasons expressed above regarding the patentability of claims 11-14 and 25-27.

In view of the above, applicants respectfully submit that all of the claims now presented are patentably distinguishable over the prior art and are in proper condition for allowance. Favorable action is therefore respectfully requested.

Dated: June 24, 2002

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